

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MONTRELL HALL,

No. C-13-2531 EMC (pr)

Petitioner,

v.

ORDER TO SHOW CAUSE

T. VIRGA, Warden,

Respondent.

I. INTRODUCTION

Petitioner, an inmate at the California State Prison - Solano, filed this *pro se* action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. His petition is now before the Court for review pursuant to 28 U.S.C. §2243 and Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

II. BACKGROUND

The petition provides the following information: Petitioner was convicted in Contra Costa County Superior Court of first degree murder, first degree robbery, residential burglary, and was found to have acted in concert in the commission of those crimes. On October 23, 2009, Petitioner was sentenced to a term of life imprisonment without the possibility of parole. He unsuccessfully appealed his conviction. Petitioner also filed one or more petitions for writ of habeas corpus in state court that were unsuccessful. Petitioner then filed this action.

III. DISCUSSION

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A district court considering an application for a writ of habeas corpus shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

The petition alleges one claim, i.e., that Petitioner received ineffective assistance of appellate counsel in that appellate counsel failed to challenge trial counsel’s ineffectiveness in failing to object to sentencing errors. Liberally construed, the claim is cognizable in a federal habeas action.

IV. CONCLUSION

For the foregoing reasons,

1. The petition warrants a response.

2. The Clerk shall serve by mail a copy of this order, the petition and all attachments thereto upon Respondent and Respondent’s attorney, the Attorney General of the State of California. The Clerk shall also serve a copy of this order on Petitioner.

3. Respondent must file and serve upon Petitioner, on or before **December 20, 2013**, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent must file with the answer a copy of all portions of the court proceedings that have been previously transcribed and that are relevant to a determination of the issues presented by the petition.

4. If Petitioner wishes to respond to the answer, he must do so by filing a traverse with the Court and serving it on Respondent on or before **January 31, 2014**.

5. Petitioner is responsible for prosecuting this case. Petitioner must promptly keep the Court informed of any change of address and must comply with the Court’s orders in a timely fashion.

6. Petitioner is cautioned that he must include the case name and case number for this case on any document he submits to the Court for consideration in this case.